

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

6 J&J SPORTS PRODUCTIONS, INC.,

Plaintiff(s), No. C 12-1704 PJH

v.

9 | MICHAEL D. PARAYNO,

No. C 12-1704 PJH

**ORDER ADOPTING MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION**

**Defendant(s).**

12 The court has reviewed Magistrate Judge Spero's Report and Recommendation  
13 ("report") re plaintiff's motion for default judgment, as well as plaintiff's objections to the  
14 report. In its objections, plaintiff J&J Sports Productions, Inc. ("plaintiff") objects to three  
15 specific findings of Judge Spero's report: (1) the award of damages being made under 47  
16 U.S.C. § 553, rather than 47 U.S.C. § 605; (2) the \$4,000 award of statutory damages; and  
17 (3) the denial of enhanced damages.

18 As to the first issue, the court notes that the report provides extensive support for the  
19 idea that, where the method of interception is unknown, section 553 should be applied  
20 rather than section 605 because “cable boxes are more easily hidden and more likely to be  
21 the source of transmission. J&J Sports Productions, Inc. v. Basto, 2011 WL 2197756 at \*3  
22 (N.D. Cal. June 6, 2011). The report also noted that at least one other case has found that,  
23 if plaintiff wanted to prove a violation of section 605, it could have filed a third-party  
24 subpoena or requested an order for inspection. In short, plaintiff does not provide any  
25 arguments that were not already considered by Judge Spero, and because the court  
26 agrees with the reasoning of the report, plaintiff’s objection to the recommendation to  
27 award damages under section 553 is OVERRULED.

28 As to both issues (2) and (3), plaintiff argues that the recommended damages  
awards do not adequately address deterrence, which plaintiff argues is the “primary goal” of

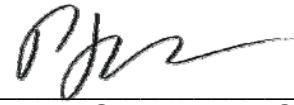
1 damage awards for piracy. And specifically as to issue (3), plaintiff argues that Judge  
 2 Spero did not adequately consider the effect of the cover charge in this case, which plaintiff  
 3 argues is the “hallmark consideration of enhanced damages.”

4 Plaintiff is correct that a number of the cases cited in the report did not involve a  
 5 cover charge. However, the report does cite to a case involving the same defendant, who  
 6 charged a higher cover charge than was charged in this case, had more patrons in  
 7 attendance than were in attendance in this case, and who evaded paying a higher licensing  
 8 fee than the licensing fee in this case. J&J Sports Productions, Inc. v. Parayno, 2012 WL  
 9 3277279 (N.D. Cal. Aug. 10, 2012). In that case, no enhanced damages were awarded.  
 10 And even more crucially, the interception at issue in this case actually occurred before the  
 11 interception at issue in the already-decided Parayno case. Thus, if enhanced damages  
 12 were not warranted in that case, they are even less warranted in this case, because any  
 13 arguments that defendant is a repeat offender who needs to be deterred are inapplicable in  
 14 this specific case. And given the lower cover charge, number of patrons, and licensing fee  
 15 in this case, the court finds no justification for awarding enhanced damages after such  
 16 damages had already been denied in the other Parayno case.

17 Accordingly, the court OVERRULES plaintiff’s objections to Judge Spero’s report  
 18 and ADOPTS it in every respect. The court finds the report correct, well-reasoned, and  
 19 thorough, and adopts it in every respect. Accordingly, plaintiff’s motion for default judgment  
 20 is GRANTED as to plaintiff’s claim under 47 U.S.C. § 553 and its claim for conversion.  
 21 Plaintiff is awarded \$4,000 in statutory damages under section 553, and \$1,200 for his  
 22 conversion claim. Plaintiff’s claims under 47 U.S.C. § 605 and Cal. Bus. & Prof. Code §  
 23 17200 are DISMISSED with prejudice.

24 **IT IS SO ORDERED.**

25 Dated: February 19, 2013

  
 26 PHYLLIS J. HAMILTON  
 27 United States District Judge  
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